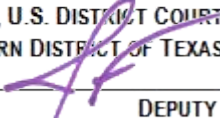


**FILED****5/1/2020**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY:  DEPUTY

UNITED STATES OF AMERICA,

Plaintiff.

v.

PAUL KRUSE,

Defendant.

CRIMINAL NO. **1:20-CR-122-RP**

**VIOLATIONS:**

18 U.S.C. §1343

18 U.S.C. §1349

18 U.S.C. §2

**INFORMATION**

The United States Charges:

**INTRODUCTION**

1. Blue Bell Creameries, L.P. ("Blue Bell"), was a Delaware limited partnership that manufactured and sold various ice cream products. The company was headquartered in Brenham, Texas, and manufactured ice cream at plants in Brenham, Texas ("Brenham Facility"), Broken Arrow, Oklahoma ("Broken Arrow Facility"), and Sylacagua, Alabama. Blue Bell engaged in and affected interstate commerce. Between 2011 and 2015, Blue Bell had more than \$2.5 billion in total gross sales.

2. Blue Bell operated as a direct store delivery company. This meant Blue Bell controlled the distribution of products from its manufacturing plants to approximately 62 regional distribution centers and then directly to the freezers of its customers.

3. Blue Bell's customers included schools, hospitals, United States military bases, grocery stores, and convenience stores.

4. At times relevant to this Information, Blue Bell delivered its products to customers in 23 states.

5. Blue Bell employed several levels of sales employees, including driver salesmen who placed the products directly in customers' freezers, territory managers who oversaw routes, branch managers who oversaw territories, and regional managers who oversaw branches. Blue Bell regional managers reported to Blue Bell's vice president of sales and Blue Bell's general sales manager, both of whom worked at Blue Bell's headquarters in Brenham, Texas.

### **Defendant**

6. At all times relevant to this Information, Defendant PAUL KRUSE was the president and chief executive officer of Blue Bell and worked at the company's Brenham headquarters. Blue Bell's sales, marketing, quality, and other departments all reported to PAUL KRUSE.

### **Listeria**

7. The bacteria *Listeria* occurs naturally in the environment. There are several species of *Listeria*, most of which are harmless. However, the species *Listeria monocytogenes* is an environmental pathogen that can contaminate foods and in some cases cause a severe, invasive illness called listeriosis. Listeriosis can be life-threatening in some cases. Persons who have the greatest risk of experiencing listeriosis due to consumption of foods contaminated with *Listeria monocytogenes* are pregnant women and their newborns, the elderly, and persons with weakened immune systems.

**Insanitary Conditions at Blue Bell Facilities**

8. From at least 2010 and continuing through April 20, 2015, Blue Bell executives, including PAUL KRUSE, knew that appropriate practices to ensure sanitary conditions were not being followed or achieved at the Blue Bell manufacturing facilities.

9. For example, on or about May 19, 2010, a Blue Bell quality control employee convened a meeting with other Blue Bell employees and plant management to discuss “condensate and roof leak concerns in all facilities” noted in government agency inspections. PAUL KRUSE knew of these recurring problems, yet PAUL KRUSE and Blue Bell failed to correct the roof leaks, condensate problems, and other insanitary conditions that continued at the Brenham Facility and the Broken Arrow Facility until in or around April 2015.

10. From at least 2010 through April 20, 2015, Blue Bell regularly tested finished product for the presence of coliform bacteria. Coliform testing is commonly used in the food industry as an indicator of the sanitary quality of products and the sanitary conditions of manufacturing facilities. Although coliforms do not normally cause serious illness, their presence is used to gauge whether other microbiological pathogens may be present. It is well-understood in the food industry that a finished-product test result showing high levels of coliforms is an indication of insanitary conditions in the production facility.

11. At all times relevant to this Information, Rule 217.45 of the Health Services Title of the Texas Administrative Code (“Texas Administrative Code”) stated that frozen desserts shall comply with a coliform standard of no more than 40 colony-forming units per milliliter of coliforms.

12. At times relevant to this Information between 2010 and 2015, Blue Bell coliform tests of finished product manufactured at the Brenham Facility and the Broken Arrow Facility

returned results in excess of the Texas Administrative Code standard and sometimes so high that they could not be counted by Blue Bell laboratory technicians. Blue Bell referred to such coliform results as "TMTC" (too many to count). Consistent with Blue Bell policy and with the approval of PAUL KRUSE, Blue Bell shipped products that contained TMTC coliforms or otherwise exceeded the Texas Administrative Code standard for coliforms from the Brenham and Broken Arrow facilities to customers in various states.

13. At times relevant to this Information, Blue Bell also on occasion arranged for third-party testing of finished product for the presence of *Listeria*. The initial product tests would return either a negative result or a "presumptive positive" result. A presumptive positive test indicates the presence of *Listeria* species but not necessarily the presence of the pathogen *Listeria monocytogenes*. A second confirmation test is required on presumptive positive results to determine if the product contains the pathogen *Listeria monocytogenes*.

14. In early 2011, a Blue Bell quality control employee created a program to periodically test Blue Bell finished product with high coliform results for the presence of *Listeria*, in part because of concerns about coliform levels expressed by inspectors with the United States military, a Blue Bell customer. Over approximately 10 weeks, the Blue Bell quality control employee sent approximately 12 samples of finished product with high levels of coliforms to an independent laboratory for *Listeria* testing.

15. On or about April 13, 2011, PAUL KRUSE met with the Blue Bell quality control employee who created the *Listeria* testing program and another Blue Bell executive and ordered them to stop testing products with high levels of coliforms for *Listeria*. In the days following that meeting, two samples sent to the laboratory before PAUL KRUSE gave the order to end the program came back as presumptively positive for *Listeria*. The Blue Bell quality control

employee informed PAUL KRUSE of the presumptive positive *Listeria* tests. PAUL KRUSE again ordered the Blue Bell quality control employee to stop the program.

16. Based on the instruction from PAUL KRUSE to stop the *Listeria* testing program, another Blue Bell quality employee destroyed hard copy and electronic records of the two presumptive positive product test results. Blue Bell subsequently shipped the products that tested presumptive positive for *Listeria* to customers without any further testing.

17. At times relevant to this Information, Blue Bell, under the direction of PAUL KRUSE, continued to ship products to customers with levels of coliforms that were TMTC or otherwise significantly exceeded the Texas Administrative Code standard for frozen desserts without further testing for pathogens such as *Listeria*.

**Positive *Listeria monocytogenes* Test Results for Blue Bell Products**

18. On numerous dates from on or about February 13, 2015, to on or about April 20, 2015, Blue Bell executives, including PAUL KRUSE, learned from state and federal authorities as well as third-party laboratory testing that samples of at least seven Blue Bell ice cream products made at two different Blue Bell facilities tested positive for *Listeria*, as more fully described below:

- a) On or about February 13, 2015, PAUL KRUSE and other Blue Bell employees were notified by Texas state health officials that samples of the Blue Bell Great Divide Bar and Chocolate Chip Country Cookie manufactured at the Brenham Facility and shipped to South Carolina tested positive for *Listeria monocytogenes*.
- b) On or about February 17, 2015, PAUL KRUSE and other Blue Bell employees were notified by Texas state health officials that tests on additional samples of the Great Divide Bar and Chocolate Chip Country Cookie manufactured at the

Brenham Facility and shipped to South Carolina had returned positive results for *Listeria monocytogenes*.

- c) On or about February 25, 2015, PAUL KRUSE and other Blue Bell employees were notified by Texas state health officials that tests on samples of the Great Divide Bar, Chocolate Chip Country Cookie, and Scoops ice cream products taken from the Brenham Facility on or about February 14, 2015 returned positive results for *Listeria monocytogenes*.
- d) On or about March 22, 2015, PAUL KRUSE and other Blue Bell employees were notified by U.S. Food and Drug Administration (“FDA”) officials that a sample of a Blue Bell three-ounce chocolate ice cream cup taken from a hospital in Wichita, Kansas and manufactured at the Broken Arrow Facility tested positive for *Listeria monocytogenes*.
- e) On or about March 30, 2015, PAUL KRUSE and other Blue Bell employees were notified by a third-party laboratory that a sample of Blue Bell Rainbow Sherbet manufactured at the Broken Arrow Facility tested positive for *Listeria monocytogenes*.
- f) On or about March 31, 2015, PAUL KRUSE and other Blue Bell employees were informally notified by an FDA inspector that a sample of Blue Bell Banana Pudding ice cream manufactured at the Broken Arrow Facility tested presumptive positive for *Listeria*.
- g) On or about April 6, 2015, PAUL KRUSE and other Blue Bell employees were notified by FDA officials that the same sample of Blue Bell Banana Pudding ice cream tested positive for *Listeria monocytogenes*.

- h) On or about April 6, 2015, PAUL KRUSE and other Blue Bell employees were notified by a third-party laboratory that a sample of Mint Chocolate Chip ice cream manufactured at the Brenham Facility tested presumptive positive for *Listeria*.

**COUNT 1**  
**(Conspiracy: 18 U.S.C. § 1349)**

19. Paragraphs 1-18 of this Information are hereby realleged and incorporated by reference as if set forth in full herein. Beginning on or about February 13, 2015, and continuing through on or about April 20, 2015, in the Austin Division of the Western District of Texas, and elsewhere within the jurisdiction of the Court, the defendant,

**PAUL KRUSE,**

did knowingly and willfully combine, conspire, confederate and agree with others both known and unknown, to commit offenses against the United States, that is to knowingly and willfully devise a scheme to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing that scheme, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

**OBJECT OF THE CONSPIRACY**

20. The object of the conspiracy was to obtain money from Blue Bell's customers by means of false and fraudulent pretenses, representations, and promises.

**MANNER AND MEANS OF THE CONSPIRACY**

21. Among the manner and means by which PAUL KRUSE and others known and unknown conducted, participated, and assisted in the scheme to defraud were the following:

22. It was part of the conspiracy that PAUL KRUSE and other Blue Bell employees known and unknown concealed potential and/or confirmed *Listeria* contamination in Blue Bell products from certain Blue Bell customers.

23. It was further part of the conspiracy that on or about February 13, 2015, after learning about the tests showing *Listeria* in Blue Bell products in South Carolina, PAUL KRUSE did not order the public recall of the affected Blue Bell products despite a Blue Bell report submitted to FDA that stated Blue Bell was "recalling all Chocolate Chip Country Cookies and Great Divide bars" as quickly as possible.

24. It was further part of the conspiracy that on or about February 14, 2015, after learning that certain Blue Bell product samples tested positive for *Listeria monocytogenes*, PAUL KRUSE ordered certain Blue Bell executives to direct Blue Bell driver salesmen to remove from stores the Chocolate Chip Country Cookie, Great Divide Bar, and other products manufactured on the same Blue Bell machine without telling the driver salesmen the reason, and without conducting any formal recall or providing any formal public notification to customers or the general public.

25. It was further part of the conspiracy that PAUL KRUSE directed those same Blue Bell executives to have the products removed from customers' freezers over the next week, during regularly scheduled deliveries, rather than as quickly as possible. PAUL KRUSE also directed those same Blue Bell executives to instruct Blue Bell sales employees not to share information about *Listeria* contamination of Blue Bell products with customers.

26. It was further part of the conspiracy that PAUL KRUSE did not share with Blue Bell's customers the information he learned on or about February 17, 2015, *i.e.*, that additional samples of Chocolate Chip Country Cookie and Great Divide Bar collected by South Carolina



health officials from Blue Bell's Columbia, South Carolina distribution center were confirmed as testing positive for *Listeria monocytogenes*.

27. It was further part of the conspiracy that on or about February 17, 2015, PAUL KRUSE rejected sending out a press release drafted by Blue Bell employees to customers and the general public regarding the two Blue Bell products that tested positive for *Listeria monocytogenes* and the ongoing withdrawal of certain Blue Bell products. The proposed press release stated that *Listeria monocytogenes* could "cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems." PAUL KRUSE instructed the Blue Bell executive who brought him the draft press release that a press release was not necessary.

28. It was further part of the conspiracy that on or about February 18, 2015, PAUL KRUSE created a statement to provide to customers who asked why Blue Bell was removing certain products from customer freezers. The statement dictated by PAUL KRUSE to a Blue Bell executive concealed the potential presence of *Listeria* in Blue Bell products, and instead stated that "there was an issue discovered with one of our manufacturing machines. Blue Bell has made the decision to have all products that have been manufactured on this machine withdrawn from the market until further testing can be completed." The statement dictated by PAUL KRUSE did not mention *Listeria monocytogenes*.

29. It was further part of the conspiracy that on or about February 17, 2015, a Blue Bell sales employee visited a hospital in Wichita, Kansas, which had purchased Blue Bell ice cream products, and began removing the Scoops product from a hospital storage freezer. Hospital food service employees asked why the Scoops product was being removed. Based on direction provided by PAUL KRUSE and certain Blue Bell executives to the employee's

manager, the Blue Bell employee told hospital employees that the product was being removed due to a “manufacturing irregularity.”

30. It was further part of the conspiracy that on or about February 18, 2015, a Blue Bell sales employee emailed a Texas school district customer the statement created by PAUL KRUSE indicating that Blue Bell products were removed from the school’s freezers because of “an issue discovered with one of our manufacturing machines.”

31. It was further part of the conspiracy that on or about February 19, 2015, a Blue Bell sales employee sent an email based on the statement created by PAUL KRUSE to a school official in Florida who asked why Blue Bell ice cream products had been removed from schools in her district. The email stated in part, “there was an issue discovered with one of our manufacturing machines...[w]e should have complete testing results in the next few days and I will let you know the results ASAP.” The email did not mention any positive *Listeria* tests.

32. It was further part of the conspiracy that PAUL KRUSE did not immediately direct Blue Bell employees to communicate openly and honestly with customers regarding the potential *Listeria* contamination in certain Blue Bell products. For example, PAUL KRUSE ignored a request that he provide “open and honest” communication to customers made by an official with another Florida school district who discovered Blue Bell had removed products due to potential *Listeria* contamination. Specifically, on or about February 20, 2015, a school district official sent an email to PAUL KRUSE and other Blue Bell executives that stated, “the decision made not to inform [the school district] of this potential health risk and to try and quietly just pick-up the products gives the impression of deception and lack of integrity. These actions are contrary to our past experiences with Blue Bell Creameries. With open and honest

communication, we would have eliminated all potential risks with our guests (our children) and secured the product.”

33. It was further part of the conspiracy that on or about February 20, 2015, a Blue Bell sales employee told employees of a Texas children’s hospital that he needed to remove certain products, including the Scoops and Chocolate Chip Country Cookie products, because of an issue with quality and without mentioning the recent positive *Listeria monocytogenes* tests. The hospital employees understood a quality issue to be a non-food-safety issue, and some of the Scoops product was not removed for nearly one month.

34. It was further part of the conspiracy that on or about February 23, 2015, a Blue Bell sales employee emailed representatives of a Texas-based restaurant chain who inquired why the Scoops product was being withdrawn. The Blue Bell sales employee emailed the restaurant representatives the statement created by PAUL KRUSE and did not tell the restaurant chain that the problem was related to potential *Listeria* contamination.

35. It was further part of the conspiracy that on or about February 26, 2015, PAUL KRUSE and other Blue Bell employees rejected a request from Texas state health officials to issue a public communication about the potential contamination of the Chocolate Chip Country Cookie, Great Divide Bar, and Scoops ice cream products after tests conducted by Texas state health officials found samples of these three products were contaminated with *Listeria monocytogenes*.

36. It was further part of the conspiracy that on or about March 6, 2015, a Blue Bell sales employee provided invoice information regarding the Scoops product to a representative of the Wichita hospital without disclosing that a sample of the product had tested positive for *Listeria monocytogenes*.

37. It was further part of the conspiracy that on or about March 6, 2015, another Blue Bell sales employee told a different representative of the Wichita hospital that the Scoops product was not available, but that she could purchase other Blue Bell products for the hospital. The Blue Bell sales employee did not tell the hospital employee that the actual reason he did not have the Scoops product was due to potential *Listeria* contamination.

38. It was further part of the conspiracy that PAUL KRUSE did not immediately inform Blue Bell customers of the link between Blue Bell ice cream and known illnesses upon learning, on or about March 9, 2015, that tests by the U.S. Centers for Disease Control and Prevention showed a genetic match between the strain of *Listeria monocytogenes* found in samples of Blue Bell Great Divide Bar, Chocolate Chip Country Cookie, and Scoops products and the strain of *Listeria monocytogenes* identified in five hospital patients at the Wichita hospital who suffered from listeriosis between January 2014 and January 2015.

39. It was further part of the conspiracy that on or about March 13, 2015, Blue Bell posted a statement on its website that claimed, “[o]ne of our machines produced a limited amount of frozen snacks with a potential listeria problem. When this was detected all products produced by this machine were withdrawn. Our Blue Bell team members recovered all involved products in stores and storage.” In fact, multiple customers reported to Blue Bell that some products purported to have been removed remained in their stores or freezers on or after the date of Blue Bell’s statement.

40. It was further part of the conspiracy that on or about March 13, 2015, PAUL KRUSE provided a statement from Blue Bell’s headquarters in Brenham, Texas that was published on the website of KSN TV in Kansas stating that “[a]ll products now on store and institution shelves are safe and wholesome.” PAUL KRUSE gave this statement despite

knowing that certain Blue Bell products on store and institution shelves had been made in the Brenham Facility and Broken Arrow Facility that lacked sanitary conditions, periodically produced products that significantly exceeded the Texas Administrative Code standard for coliforms in frozen desserts, and had produced certain finished products that tested positive for *Listeria monocytogenes*.

41. It was further part of the conspiracy that PAUL KRUSE instructed Blue Bell employees not to immediately pick up a product from stores after samples tested presumptively positive for *Listeria*. Specifically, on or about March 31, 2015, an FDA inspector informally notified Blue Bell that a sample of the company's Banana Pudding ice cream manufactured at the Broken Arrow Facility had tested presumptive positive for *Listeria*. Blue Bell employees determined that approximately 1,050 pints of the affected lot were already in customers' stores in Texas. After receiving direction from PAUL KRUSE and other Blue Bell executives, Blue Bell sales employees were instructed "do not pick anything up in the stores unless we notify you to do so."

42. It was further part of the conspiracy that Blue Bell concealed additional positive *Listeria* test results from customers. Specifically, on or about April 3, 2015, Blue Bell announced it was closing the Broken Arrow Facility but was not recalling products made in that facility. That same day, the CDC issued a statement advising consumers not to eat any products manufactured at the Broken Arrow Facility. In response to an email from a third-party distributor, a Blue Bell sales executive wrote that "to date, we have not been made aware by the FDA of any other items that have tested positive for listeria at any of our plants." In fact, Blue Bell was aware from a third-party laboratory that a sample of Rainbow Sherbet from the plant

tested positive for *Listeria monocytogenes* on March 30, 2015, and from FDA that a sample of Banana Pudding from the plant tested presumptive positive for *Listeria* on March 31, 2015.

**COUNTS 2-7**

**[Wire Fraud/Attempted Wire Fraud – 18 U.S.C. §§ 1343, 1349, 2]**

43. Paragraphs 1-42 of this Information are realleged as though fully set forth herein. On or about the dates set forth below, in the Western District of Texas and elsewhere,

**PAUL KRUSE**

the defendant herein, having devised and intending to devise a scheme to defraud as described above, in executing the scheme and attempting to execute the scheme, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	WIRE TRANSMISSION
<b>2</b>	02/19/2015	Email from a Blue Bell sales employee in Florida, sent through Blue Bell's email server in the Western District of Texas, to an employee of a school district in Florida who asked why Blue Bell employees had removed ice cream from school cafeteria freezers. The Blue Bell sales employee's email to the school employee included the statement created by PAUL KRUSE that the ice cream was removed because of a problem with a manufacturing machine and did not disclose that the actual reason for the removal of ice cream was that certain Blue Bell products had tested positive for <i>Listeria monocytogenes</i> .
<b>3</b>	02/23/15	Email from a Blue Bell sales employee in the Western District of Texas, to representatives of a restaurant chain, one of whom was located in Tennessee, who asked why Blue Bell employees had removed the Scoops ice cream product from their restaurants. The Blue Bell sales employee's email to the restaurant chain representatives included the statement created by PAUL KRUSE that the ice cream was removed because of a



		problem with a manufacturing machine and did not disclose that the actual reason for the removal of ice cream was that certain Blue Bell products had tested positive for <i>Listeria monocytogenes</i> .
4	03/06/2015	Email from a Blue Bell sales employee in Oklahoma City, Oklahoma, through Blue Bell's email server in the Western District of Texas, to a representative of a hospital in Wichita, Kansas, providing a summary of purchases of the Scoops product but not disclosing that the product was removed due to potential <i>Listeria</i> contamination.
5	03/06/15	Email from a Blue Bell sales employee in Wichita, Kansas, through Blue Bell's email server in Texas, to an employee of the same hospital in Wichita, Kansas, stating that Blue Bell did not have the Scoops product for purchase but that other products were available. The email did not disclose that the Scoops product was removed due to potential <i>Listeria</i> contamination.
6	04/04/15	Email from a Blue Bell sales employee in the Western District of Texas to employees of a third-party distributor in Maryland, who asked why Blue Bell was closing the Broken Arrow Facility but not recalling ice cream made at that facility even though the CDC recommended not eating ice cream made at that facility. The Blue Bell sales employee's email stated that the FDA had not informed Blue Bell of any further positive <i>Listeria</i> tests and that the CDC based the recommendation on the previous recall of three-ounce cups made at the Broken Arrow Facility. In fact, the FDA had already informed Blue Bell of a presumptive positive <i>Listeria</i> test result on Banana Pudding ice cream and a third-party lab had informed Blue Bell of a positive <i>Listeria monocytogenes</i> test result on a Rainbow Sherbet. Both products were manufactured at the Broken Arrow Facility and contributed to the decision to close that facility. In fact, the CDC based the recommendation not to eat products made at that facility in part on the additional positive <i>Listeria</i> test results.
7	04/07/15	Email from a Blue Bell quality employee in the Western District of Texas to an employee of a retail chain in Arkansas that was Blue Bell's largest customer. The retail chain employee had repeatedly asked for more information about Blue Bell's efforts to determine the cause and scope of <i>Listeria</i> in the company's facilities. The Blue Bell quality employee's email misrepresented the conditions in Blue Bell's facilities and failed to disclose certain presumptive positive and confirmed positive <i>Listeria</i> test results.

All in violation of Title 18, United States Code § 1343, § 1349 and §2

Respectfully Submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
United States Department of Justice

GUSTAV W. EYLER  
Director  
Consumer Protection Branch  
United States Department of Justice

By:

Handwritten signatures of Patrick Hearn and Matthew J. Lash in blue ink, positioned above their printed names.

PATRICK HEARN  
MATTHEW J. LASH  
Trial Attorneys  
Consumer Protection Branch  
United States Department of Justice